

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

L. T. TUCKER,

Plaintiff,

v.

CORIZON CORRECTIONAL
HEALTHCARE, INC., et al.,

Defendants.

Case No. 2:19-cv-170

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants Corizon Correction Healthcare, Inc. (Corizon) and Nurse Practitioner (NP) Falk moved for summary judgment on Plaintiff's Eighth Amendment deliberate-indifference claims against them. Plaintiff filed a response in opposition, and Defendants filed a reply. Plaintiff moved for leave to file a sur-reply. The matter was referred to the Magistrate Judge, who issued a detailed Report and Recommendation (R&R), recommending that the Court deny Plaintiff's motion for leave to file a sur-reply and grant Defendants' motion for summary judgment. The matter is presently before the Court on Plaintiff's six objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In his first objection to the Report and Recommendation, Plaintiff argues that the Magistrate Judge erred in construing his allegations "as a disagreement over treatment" and failed

to consider his factual allegations and exhibits that would instead support the conclusion that he was repeatedly denied medical treatment (Pl. Obj., ECF No. 148 at PageID.1974-1978). In his third objection, Plaintiff makes the related argument that the Magistrate Judge committed an “oversight” in failing to construe his allegations as “alleging claims from Jul. 4, 2017 til present” (Pl. Obj., ECF No. 148 at PageID.1979-1980). Plaintiff’s arguments lack merit. The Magistrate Judge accurately described Plaintiff’s claims in his Amended Verified Complaint (R&R, ECF No. 140 at PageID.1943-1945). That the Magistrate Judge determined that the “thrust of Tucker’s claim is a disagreement with the pain medication that he was prescribed” (*id.* at PageID.1955) does not reveal any factual or legal error by the Magistrate Judge.

In his second objection, Plaintiff argues that the Magistrate Judge committed an “oversight” and failed to acknowledge Defendants’ “exhibits dumping” or that a verified complaint carries the same weight as an affidavit (Pl. Obj., ECF No. 148 at PageID.1978-1979). Plaintiff’s argument lacks merit. The Magistrate Judge set forth the correct standard for reviewing motions under Federal Rule of Civil Procedure 56 (R&R, ECF No. 140 at PageID.1946-1947). The Magistrate Judge’s analysis demonstrates a careful review of the evidence in the record, including the allegations in Plaintiff’s pleading as well as the 114 pages of exhibits that Plaintiff attached to his response in opposition to Defendants’ motion.

In his fourth objection, Plaintiff argues that the Magistrate Judge erred in making a “credibility determination between Plaintiff Tucker and Defendants Corizon and Falk on questions of fact” (Pl. Obj., ECF No. 148 at PageID.1981). In his fifth objection, Plaintiff makes the related argument that the Magistrate Judge engaged in improper “weighing of evidence” and “prematurely” issued a decision on the summary judgment motion where “additional discovery was needed” (Pl. Obj., ECF No. 148 at PageID.1981-1984). Plaintiff’s arguments lack merit.

Again, the Magistrate Judge set forth the correct standard for reviewing motions under Federal Rule of Civil Procedure 56 (R&R, ECF No. 140 at PageID.1945-1946), including the correct process for requesting additional discovery (*id.* at PageID.1942 n.2). The Magistrate Judge did not make a credibility determination in deciding Plaintiff's deliberate-indifference claims but properly reviewed the record and determined that Plaintiff's medical records supported the conclusion that Plaintiff had received medical care from Falk (*id.* at PageID.1954-1955, citing ECF No. 105-1, PageID.1282-86 (medical records for NP Falk's examination of Tucker on July 20, 2018); PageID.1291-1296 (medical records for NP Falk's examination of Tucker on October 12, 2018); PageID.1298-99 (medical records for NP Falk's examination of Tucker on November 6, 2018); PageID.1300-02 (medical records for NP Falk's examination of Tucker on November 16, 2018); PageID.1311-12 (medical records for NP Falk's examination of Tucker on December 18, 2018)).

Last, in his sixth objection, Plaintiff argues that the Magistrate Judge committed an "oversight" in failing to recognize that Defendants implemented a policy and "pervasive pattern" in the complete denial of medical treatment to Plaintiff "as far back as Oct. 30, 2014" (Pl. Obj., ECF No. 148 at PageID.1984-1985). Plaintiff's argument lacks merit. The Magistrate Judge's resolution of Plaintiff's claim against Corizon was based on his determination that "[d]espite the volumes of documents Tucker filed with his response, he has not adduced evidence showing that Corizon had an unwritten policy regarding the treatment of patients in his condition" (R&R, ECF No. 140 at PageID.1952-1953). The Magistrate Judge explained that "[t]he record lacks evidence of any instances of other prisoners being denied necessary and life-saving drugs" (*id.*).

In sum, Plaintiff's objections fail to demonstrate any factual or legal error by the Magistrate Judge; therefore, the objections are properly denied, and this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 148) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 140) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motion for leave to file a sur-reply (ECF No. 128) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Defendants Corizon and Falk's motion for summary judgment (ECF No. 105) is GRANTED for the reasons stated in the Report and Recommendation.

Dated: August 24, 2021

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge